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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No 232 of 2000

in

COMPANY APPLICATIONNo 78 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

K.K. PATEL & COMPANY

Versus

O.L.OF P.G.TEXTILES MILLS CO. LTD.

Appearance:

MR JAYANT PATEL for Petitioner

OFFICIAL LIQUIDATOR for Respondent No. 1

DS AFF.NOT FILED (N) for Respondent No. 2, 3, 4, 5, 6

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision:4 /12/2000

C.A.V. JUDGEMENT

1. The applicant has filed this application with a

prayer to direct the Official Liquidator to pay Rs. 6,13,967/- with 18% interest per annum to the applicant in connection with the work carried out of examination, verification and investigation of the claims of the workers and employees and preparation of the report of M/s. P.G. Textiles Mills Co. Ltd. (in liquidation) as per the instructions of the Official Liquidator. In support of the same he has filed affidavit dated 22.6.2000.

2. The relevant facts giving rise to this application are as under:

Facts:

2.1 The applicant has stated that in this case M/s. P.G. Textiles Mills Co. Limited (in liquidation) wound up by order of this court on 26.3.1989. Thereafter, the Official Liquidator attached to this Court was appointed as Official Liquidator of the Company in winding up.

2.2 The Official Liquidator by his communication dated 30.11.1995 stated to the applicant that the applicant has been appointed for investigation and scrutiny of the books of accounts and other records of the Company in liquidation for the purpose of finding out misfeasance, if any, and also requested to verify the list of claims filed by the workers' Union on the basis of the entitlement of the workers and employees, according to their eligibility under the applicable laws.

2.3 Pursuant to the aforesaid order the applicant has carried out investigation and also verified the claims of workers for the period 1987 to 1995. He has carried out investigation of claims of workers (other than INTUC) , office staff and workers (INTUC). He has also carried out investigation in relation to payment of gratuity and Industrial Disputes Act and also verified the claims on the basis of available record and also called for information and explanation obtained from the representatives of workers and office staff. For that purpose he has carried out investigation from 6.12.1995 to 26.7.1996. He has also stated that the principal staff has worked for 748 hours and three assistants and computer operator for 3212 hours in all. The applicant has stated that the Institute of Chartered Accountant has recommended that for the principal person as per the Institute norms per hour fees is Rs. 750/and whereas for assistants the fees is Rs. 375/- which has been subsequently revised also to Rs. 1500/- and Rs. 750/respectively. However, the applicant states that

because he was working for the Company in liquidation he has charged only Rs. 450/- per hour for principal person and Rs. 50/- per hour for the work which the assistant has done. He has also stated that because of his investigation Rs. 7,00,92,703/- has been found due and payable as against Rs. 16,36,43,095/- claimed by the Majoor Mahajan Sangh, resulting in reduction of claim to the tune of Rs. 9,35,50,392/-. He has also stated that he has calculated wages, salaries of the workers from 1.3.1987 to 23.6.1989 for permanent workers and employees only. He has also calculated privilege leave for the period from 1.3.1987 to 23.6.1989 only for those workers and employees who have worked not less than 240 days in any year upto 1986. He also also calculated gratuity after considering the additional period of two years from 1.3.1987 to 23.6.1989 for the eligible workers and employees. He has also calculated retrenchment compensation for the period from 1.3.1987 to 23.6.1989 only for those workers/employees who have worked not less than 240 days in any year upto 1986. He has also calculated bonus at the rate of 8.33% for the period from 1.3.1987 to 23.6.1989. He has also calculated additional claim in respect of wages and salary, privilege leave, gratuity, retrenchment compensation and bonus and the same is added to the claim already investigated in Company Application No. 166 of 1995. He has also stated that the Official Liquidator has also addressed another letter dated 6.10.1997 in connection with revised claim made by the workers' Union and to verify the claim.

2.4 In view of the same he has given one bill to the Official Liquidator for Rs. 4,97,992/- and another bill for Rs. 2,15,975/-.

3. The Official Liquidator has pointed out that in the case of Jubilee Mills this Court (Coram: M.S. Shah, J) has held that as regards calculation of workers' wages are concerned, in liquidation only Rs. 15/- per worker has to be paid. The Court has passed the order on 6.3.1999 in Company Application No. 356 and 362 of 1998 in Company petition No. 10 of 1986 as stated by the Official Liquidator.

4 Mr. Patel, learned counsel for the applicant, states that in this case an order has been passed in March 1999 whereas he has been entrusted the work in the year 1995 and therefore these guidelines cannot be applied in the present case. He has further stated that in any view of the matter, the nature of work was very complicated and different from the ordinary calculations it was not a simple verification of the claim and

therefore the bill of the Chartered Accountant is not exorbitant and excessive. He has also stated that the Chartered Accountant has admitted that the claim is less than the normal claim and given and therefore the same is fair and reasonable. He has further stated that in view of the investigation carried out by the Chartered Accountant the Company in liquidation has saved Rs. 9 crores and therefore even the fees of the Chartered Accountant seems to be reasonable and fair.

4(a) In my view, the present matter is for the payment of professinal fees of the Chartered Accountant who has investigated the claims of the workers, books of accounts and other records in order to find out whether there lies any cause for misfeasance etc. against the Ex. Directors and Officers of the Company as per the order/direction of this Court. In my view, therefore, in the present matter, the Chartered Accountant has discharged his professional duties as per the request/appointment made by the official liquidator in terms of the direction of this Court and the Chartered Accountant being expert discharging the duties as expert for which he is entitled for fees to be decided by this Court.

5 I have also heard Mr. Vasavada for the workers. In view of the same and in view of the peculiar facts and circumstances, As regards the bill of Rs. 4,97,200/- of principal person who has worked for 748 hours and charged fees of Rs. 750/- per hour is concerned, I direct that Rs. 550/- per hour to be given to the principal officer. As regards the fees of the assistants and computer operator is concerned, a sum of Rs. 50/- is charged per hour which is fair and reasonable and I do not interfere with the same.

6 As regards the other bill of Rs. 2,15,975/- is concerned, wherein the Chartered Accountant has admitted that he has charged Rs. 500/- for principal person, I direct that the principal person should be paid Rs. 400/per hour and as regards fees of qualified assistant is concerned, he has charged Rs. 400/- per hour. I, therefore, reduce the same to Rs. 300/- per hour. As regards fees of two assistants and computer operator are concerned, he has charged Rs. 412/- per hour. I direct that they should be paid Rs. 300/- per hour.

7. In view of the aforesaid observations, I direct the Official Liquidator to calculate the amount and pay the same to the Chartered Accountant accordingly. The application is disposed of accordingly. No order as to

costs.

(K.M. MEHTA, J)

(pkn)

After the pronouncement of the judgement, Shri Jayant

amount may be paid to the Chartered Accountant at an early date. In view of the same, I direct the Official Liquidator to calculate the amount and pay the same to the Chartered Accountant as expeditiously as possible preferably within two months from today.

Date: 4/12/2000 (K.M. MEHTA, J)